

EXECUTIVE SESSION

H. R. 13200

A BILL TO ESTABLISH A DEPARTMENT OF  
TRANSPORTATION, AND FOR OTHER PURPOSES

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Wednesday, June 22, 1966

House of Representatives,

Subcommittee on Executive and  
Legislative Reorganization  
of the Committee on Government  
Operations,

Washington, D. C.

The subcommittee met, pursuant to adjournment, at  
2:00 o'clock p.m., in room 2203, Rayburn House Office  
Building, the Honorable Chet Holifield presiding.

Present: Representatives Holifield, Rosenthal,  
Erlenborn and Wydler.

Also Present: Elmer W. Henderson, General Counsel,  
Executive & Legislative Reorganization Subcommittee; James  
A. Lanigan, General Counsel, Government Operations Committee;  
Quinn Romney, Association Counsel, Government Operations  
Committee; Herbert Roback, Staff Member, Congressman Holifield,  
Daniel Fulmer, Staff Member, Congressman Holifield;  
William Copenhaver, Minority Counsel, Government Operations  
Committee; Dolores Fel'Dotto, Clerk; and Bob Nordhouse,  
Legislative Counsel's Office.



Mr. Holifield. The committee will be in order.

How shall we handle this? We did quite a bit of work on it yesterday. Do you have some amendments you want to offer?

Mr. Erlenborn. Yes.

Mr. Holifield. I will recognize Mr. Rosenthal for the first amendment.

Shall we take them section by section?

Mr. Rosenthal. I have an amendment to Section 3.

Mr. Chairman. I have an amendment that we discussed yesterday. I have some copies here if anyone is interested.

This is follow-up of a two-hour discussion we had, Mr. Wydler and myself, with members of the Administration's team this morning. The amendment establishes an Office of Aircraft Noise Control and Abatement in the Department. My own judgment is that this is a subject of such intense interest by maybe 10 to 15 million people, maybe by a hundred Congressmen, that I think it is an area that ought to have statutory direction and authority. I myself am convinced, Mr. Chairman, that with adequate appropriations and appropriate impetus much can be done. During the period that Hallaby was a Chairman his classic cry was that the state of the art had not sufficiently developed to accomplish much. However, this is no longer the case because we found out that when airframe manufacturers worked together in conjunction with airplane engine manufacturers they can develop a much quieter aircraft, to wit, the 727, which is being used in many



airports. The airlines, particularly the American airlines, Frank Coe testified before Harrison's Committee 2 or 3 years ago that yes, they could improve the noise abatement of the planes but they had such a heavy investment in the equipment that they were not going to do anything about it.

The Administration advised Wydler and myself that they were going to submit a bill almost revolutionary in content, either today or tomorrow, that the FAA would promulgate aircraft noise controls and would set regulations for manufacturers in terms of noise abatement. We found out that when airplanes manufacture planes they do it only with concern for power and for seating and for commercial usage. They are in no wise concerned with the social problem of noise suffered by residents of surrounding communities surrounding airports.

My own judgment is, quite frankly, that in the classic sense of developing a new Department perhaps it would be better not to encumber a Secretary with additional sub-agencies. Having said that, in my judgment the matter that is of such great concern to so many millions of Americans deserves a little bit of special attention. Weighing the scales of justice as compared to the little bit of extra difficulty the new Secretary might have concerned with the potential advantage that 10 to 20 million Americans will have, I can see no disadvantage in the adoption of the amendment. I think it will serve a useful purpose. I think frankly, the President and the Administration and particularly this committee taking the lead in a subject like this will



receive the plaudits and pats on the back of many, many newspapers throughout the country and many of our constituents.

Therefore, I urge the adoption of the amendment. I will read it quickly, Mr. Chairman. It falls on page 4 and reads as follows:

"Section 3 (g) There is hereby established within the Department an Office of Aircraft Noise Control and Abatement. The Office shall supervise research and development programs in the field of aircraft noise control and abatement, and shall establish such regulations as may be necessary to require maximum utilization of practical noise control and abatement techniques."

Mr. Rosenthal. The only objection the Administration has is the threat of encumbrance of an additional sub-agency on the Secretary. As I said at the cost of being redundant, I think this committee would come out with flying colors if they were to take the lead and initiative in trying to help solve a problem that can be solved by corrective action, by attention and by adequate appropriations. I urge quite sincerely, Mr. Chairman, the adoption of the amendment.

Mr. Holifield. Mr. Wydler?

Mr. Wydler. I support Mr. Rosenthal in what he said. I have to say, Mr. Chairman, in all candor that the refusal of the Administration to accept this proposal and the counter proposals that they make lead me to believe that they are really planning to bury this matter once again.

I think we are going to get a short period of lip service to this matter and then as quick a burial as we can



possibly have, because they realize that the way this proposal is being made, it will require continuous action in this area until the problem is solved. I just cannot understand their refusal to accept it, since in effect they are saying in general terms that this is exactly what they intend to do. I think personally the Administration is almost bound to support this proposal. I think the President's message to Congress on this Department of Transportation called for us in some dramatic way to do something about this problem. In my opinion it was an open invitation to this committee to take action in this particular area.

He went out of his way to pick out aircraft noise, not any other kind of noise, and speak about it at great length and say that something must be done. But the first time we get to a situation to do something, we find that the generalizations again enter into the picture. I do support Mr. Rosenthal and I intend possibly to offer an amendment of my own in this connection pending the disposition of his amendment.

Mr. Holifield. I think that the intent of the amendment is good. I think it can be handled without making a formal part of this Department a structure or in the structure of the Department a formal office for this purpose. I point out even if you do this and the Administration wants to staff this office with one man as Secretary, it can do it. I would like to give you the testimony which they have sent up on this particular subject. They do go along with an inclusion in the general provisions which would come in on Section 4(a)



down about three lines up from the bottom, you see where the word "transportation" is. After the word "transportation and comma, we could put in there, "including aircraft noise abatement" as one of the admonitions for the Secretary to exercise leadership under the direction of the President in all these different things. Promoting and undertaking development, collection and dissemination of technological, statistical economical and other information relative to domestic and international transportation. Promote and undertake research and development relating to transportation, including aircraft noise abatement. And then, and consult. This is their reasons for this. I should like to comment on the suggestion that the bill be amended to direct the Secretary to establish an Office of Aircraft Noise Abatement in the Federal Aviation industry which will be one of the constituent organizations of the Department of Transportation. This suggestion should not be adopted for a number of reasons. The primary reason is that by doing so, we open Pandora's box. It would be very difficult to contain the bill against further amendments to establish special offices for which the Secretary will be responsible. A number of suggestions of this type have already been received. We have uniformly turned them down. If we justify one exception we will be asked to justify others and will be in less favorable position to turn them down. We recognize that there is widespread interest in alleviating aircraft noise. There is also widespread Government activity to handle this problem and wide-spread recognition in the



Executive Branch that it must be handled. The President himself emphasized the importance of the problem in his message on transportation. The message stated that the President was directing his Personal Advisor on Science and Technology to work with the Administrators of the FAA, and NASA and the Section of Commerce and Housing & Urban Development to frame an action program to attack the problem. He said he was asking the group to study the development of noise standards and the compatibility of land use near airports. To consult with local communities and industry and to recommend legislative or administrative action is needed to move ahead in this area. This group headed by the President's Advisor has been actively at work since the beginning of the year. It has already published an extensive report by a panel of experts on means by which noise problem can be alleviated. The FAA Administrator has established a special noise staff in the FAA to devote its entire time and attention to means and methods of alleviating aircraft noise.

Pursuant to the President's direction that legislation be framed, FAA is transmitting to the Congress an amendment to the Federal Aviation Act which will empower the Secretary of Transportation to prescribe noise measurement standards and rules and regulations to provide for the control and abatement of aircraft noise. The legislation provides for action against certificated holders such as manufacturers, pilots, and airlines who fail to abide by such regulations or standards. It is a very effective additional statutory authority and one that will deal with noise problems



directly. It will be transmitted the next few days and  
I hope it will be adopted very shortly.

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Mr. Holifield. I would like to continue the Administration position on this matter.

"An additional reason exists for not placing a statutory noise abatement service in the Department of Transportation or, for that matter, in any other single department or agency. This follows from the fact that any noise abatement program is based on a systems approach involving research and development to reduce aircraft engine noise, the implementation of noise abatement techniques in operating aircraft, and the compatible use of land adjacent to airports.

"The present noise abatement program which the President directed to be undertaken in his Department of Transportation Message is based on such a systems approach to solve the noise problem.

"In this connection, it is to be noted that the vitally important area of compatible land use is primarily within the competence of the Department of Housing and Urban Development. Thus, at the present time, that Department has primary responsibility for carrying out this segment of the noise abatement program. Congress itself has recognized the expertise and jurisdiction of HUD in this area in section 1113 of the Housing and Urban Development Act of 1965.

"It should also be noted that the primary responsibility for accomplishing the basic research for developing quieter jet engines is being undertaken by NASA. Because of this



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necessary systems approach to the noise problem, it should be obvious that no single statutory service in any one department or agency can successfully carry out an aircraft noise abatement program. Such a program can only be accomplished by the cooperation of those federal departments and agencies which have expertise in the area with appropriate assistance and consultation with industry.

"Further, the Administration and many members of this committee are agreed on a change in section 4 (a) of the bill which will make it perfectly clear that noise abatement activities are one of the responsibilities of the Secretary. This amendment very specifically identifies the alleviation of noise, which includes aircraft noise, as the Secretary's responsibility; we must assume that he will make adequate organizational arrangements for taking care of this responsibility just as he will in every other facet of the Department's activity.

"In view of all of this activity, including the bill to be introduced in the Congress, and the change we are making in section 4 (a), there is no need to further amend the bill to establish an office for this purpose in the Department, when in fact the Administrator has already established such a staff in the FAA.

"If we must provide further assurance that the problem of aircraft noise will be handled adequately, I think we can



do so in emphatic terms in the committee's report, explaining the purpose of section 4 (a), and in the other legislative history of this bill.

"I might add that what has already been done by the President's scientific advisor, and the agencies acting in cooperation with him, serves to place concern with the problem of aircraft noise on a much higher level than an amendment which would direct the creation of an office in the Federal Aviation Administration. I think we should concentrate on the fact that the solution to this problem will be available more quickly if it receives attention at higher levels in the government.

"The President has placed this at the very highest level that he can, directly in the hands of his own advisor and science and technology and Cabinet members and agency heads. I can imagine no more effective approach for meaningful focus of high level concern than this."

Now, gentlemen, is there any further comment? I just do not want to start opening up the bill personally to a flood of amendments. I think we can write a very strong section in our report on this, and we could.

I would offer as a substitute amendment to Mr. Rosenthal's amendment after the word "transportation" add the words "including aircraft noise abatement."

Now, the Administration wants "including noise abatement",



so it will be across the board. That is really the way they want it.

I would be willing to write it "including noise abatement, with specific attention to aircraft noise abatement", something like that.

If we are going to bring noise into the picture, I frankly would like to bring it in across the board, not only aircraft noise but all other kinds of noise that would be attached to transportation.

What would you think about this, Jim, about an amendment so instead of confining it just to aircraft noise abatement we say something like "including noise abatement, with particular attention to aircraft noise"?

Mr. Rosenthal. May I speak off the record.

Mr. Holifield. Yes.

(Off the record.)

Mr. Lanigan. This would have to be relating to transportation. I think that would give recognition to aircraft noise and still provide for across the board.

Mr. Holifield. What I want to do is go as far as possible on the subject matter without setting up even a formal structure of another office, because I can think of a number of other offices that are just as important, although they may not have as much sex appeal to the people.

Mr. Rosenthal. "Concern" is the word. Why do we not



vote on it then?

Mr. Holifield. I think we should.

Mr. Wydler. A parliamentary inquiry, if I might, Mr.

Chairman.

Would the passage of your substitute amendment preclude a consideration of Mr. Rosenthal's amendment?

Mr. Holifield. If my amendment is adopted, you would vote on the Rosenthal amendment as modified, which would preclude a vote.

Mr. Rosenthal. That really is what you want to do?

Mr. Holifield. Yes.

Mr. Rosenthal. Can we not vote on my amendment?

Mr. Holifield. No. I am carrying the bill.

Mr. Rosenthal. I think you are inviting other problems.

Mr. Holifield. You are inviting the problem, and I am trying to solve it and go part way with you. You are the one that brought up the problem, not I.

Mr. Rosenthal. Let me tell you what I think.

I do not think by talking about noise abatement of futuristic considerations like high speed transit and so forth Mr. Boyd can avoid indicting himself of being guilty of unconcern about a serious noise problem of the past five to ten years. He is worried about the future and I am worried about today.

Mr. Holifield. I know. But in the provisions "shall among his responsibilities exercise leadership under the directi



of the President" in all of these things listed here, including noise abatement with particular attention to aircraft noise -- what I am trying to do is accommodate you.

Mr. Rosenthal. I appreciate that.

The point is that Mr. Wydler and I and a few others have lived with this problem for years and spent a lot of time at it, and I think perhaps we have learned something that others cannot follow quickly as we have. There is much that can be done that the Administration has not done. I am not satisfied with their empty gestures.

The President's Committee is doing this because it is a second-rate committee and administrative set-up and office with four people in it. This merely fortifies my own belief in their lack of credibility in assuming the solution of a problem of great enormity.

If you have the votes like it would appear to me you have, we might as well dispose of it.

Mr. Wydler. I would like to offer a substitute amendment to the substitute.

Mr. Holifield. Read it.

Mr. Lanigan. This amendment for Mr. Wydler is on page 4, following section 3 (f), add the following new subsection:

"(g)(1) There is hereby established within the Department an Office of Aircraft Noise Abatement. The Office shall be located within the Federal Aviation Administration and shall



be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate established for grade 18 of the General Schedule of the Classification Act of 1949 (63 Stat. 954, 5 U.S.C. 1071 et seq.). All the functions, powers, and duties of the Secretary and the Administrator relating to aircraft noise abatement shall be transferred to and vested in the Office of Aircraft Noise Abatement.

"(2) The Director shall prescribe (and may from time to time modify) (A) standards for the measurement of aircraft noise, and (B) such rules and regulations as he may find necessary to provide for the control and abatement of aircraft noise and for the application of such standards, rules, and regulations in the issuance, amendment, modification, suspension or regulation of any certificate authorized by title VI of the Federal Aviation Act of 1958 (72 Stat. 776, 49 U.S.C. 1421 et seq.).

"(3) In any action to amend, modify, suspend or revoke a certificate wherein violation of aircraft noise standards, rules or regulations is at issue the certificate holder shall have the same notice and appeal rights as are contained in section 609 of title VI, and in any appeal to the National Transportation Safety Board, the Board shall consider the aircraft noise violation issues in addition to the safety and public interest issues as provided in section 609."



Mr. Wydler. Mr. Chairman, first there is a clerical mistake in this. The word "regulation" in paragraph 2 should be "revocation".

Mr. Erlernborn. The word "regulations" is in there twice.

Mr. Wydler. "Regulation" in the singular form should be "revocation".

Mr. Chairman, this proposed amendment, as I understand it, actually, paragraphs 2 and 3 are acceptable to the Administration. As a matter of fact, the Administration, I understand, intends to offer these particular proposals to the Congress for passage. So I know they are acceptable to the Administration.

And I believe the matter contained in paragraph 1 will give the necessary structural set-up to carry them out properly and well. So I urge the adoption of my amendment.

Mr. Holifield. Your amendment is offered as a substitute?

Mr. Wydler. For your substitute.

Mr. Holifield. To the Holifield amendment.

I must oppose this because it does the same thing, in a way, that Mr. Rosenthal's does. It sets up a formal office. For the reasons I have stated before, I must oppose it.

Will the clerk please call the roll on the Wydler substitute for the Holifield amendment?



The Clerk. Mr. Dawson.

Mr. Holifield. No.

The Clerk. Mr. Holifield.

Mr. Holifield. No.

The Clerk. Mr. Reuss.

Mr. Holifield. No.

The Clerk. Mr. Rosenthal.

Mr. Rosenthal. Aye.

The Clerk. Mr. Garmatz.

Mr. Holifield. No.

The Clerk. Mr. Gallagher.

Mr. Holifield. No.

The Clerk. Mr. Brown.

Mr. Erlenborn. Aye.

The Clerk. Mr. Erlenborn.

Mr. Erlenborn. Aye.

The Clerk. Mr. Wydler.

Mr. Wydler. Aye.

Mr. Holifield. Please announce the results.

The Clerk. Five nays and four ayes. The amendment is lost.

Mr. Holifield. The vote now occurs upon the Holifield substitute to the Rosenthal amendment.

Call the roll.

The Clerk. Mr. Dawson.

Mr. Holifield. Aye.

The Clerk. Mr. Holifield.

Mr. Holifield. Aye.



The Clerk. Mr. Reuss.

Mr. Holifield. Aye.

The Clerk. Mr. Rosenthal.

Mr. Rosenthal. No.

The Clerk. Mr. Garmatz.

Mr. Holifield. Aye.

The Clerk. Mr. Gallagher.

Mr. Holifield. No.

The Clerk. Mr. Brown.

Mr. Erlenborn. No.

The Clerk. Mr. Erlenborn.

Mr. Erlenborn. No.

The Clerk. Mr. Wydler.

Mr. Wydler. Aye.

Mr. Holifield. Announce the result.

The Clerk. Five ayes, four noes.

Mr. Holifield. The vote now occurs upon the Rosenthal amendment as amended by the Holifield amendment.

Mr. Wydler. As a point of information, could we have the wording we finally voted on?

Mr. Holifield. Yes. We will call the roll on this, please.

The Clerk. Mr. Dawson.

Mr. Holifield. Aye.

The Clerk. Mr. Holifield.

Mr. Holifield. Aye.

The Clerk. Mr. Reuss.

Mr. Holifield. Aye.

The Clerk. Mr. Rosenthal.



Mr. Rosenthal. Aye.

The Clerk. Mr. Garmatz.

Mr. Holifield. Aye.

The Clerk. Mr. Gallagher.

Mr. Holifield. Aye.

The Clerk. Mr. Brown.

Mr. Erlernborn. Aye.

The Clerk. Mr. Erlernborn.

Mr. Erlernborn. Aye.

The Clerk. Mr. Wydler.

Mr. Erlernborn. Aye.

The Clerk. Unanimous.

Mr. Holifield. Let us go to the next amendment. Are there any further amendments?

Mr. Rosenthal. I have no other amendments.

Mr. Holifield. Mr. Erlernborn?

Mr. Erlernborn. I have a few, Mr. Chairman.

Mr. Holifield. All right.

Mr. Erlernborn. Amendment number one, I would ask leave not to read. It is rather lengthy. It is in the nature really of a technical amendment, not changing the substance. What amendment number one would do would be to amend section number two and four.

It occurs to us in the discussion that we have had that often in determining what powers and duties the Secretary has



we have reference to section 2, the second paragraph of section 2, on page 2 of the draft of the bill we have before us.

For instance, at the bottom several times we have had reference to "develop and recommend national transportation policy and programs". This whole second paragraph really properly belongs in section 4 in spelling out the powers and duties of the Secretary.

So amendment No. 1 would strike the second paragraph of section 2 and would amend section 4 to restate all of the powers and duties of the Secretary that are in section 4, only doing it by numbered paragraphs rather than a long sentence as we have here, and then would add to section 4 (a) those powers and duties that are spelled out in section 2.

There is only one addition of substance. There is no deletion and only one addition of substance, and that is subparagraph 11 which would be "promote safety in transportation and implement the recommendations of the National Transportation Safety Board". That is added because, though the bill is concerned with safety, nowhere in the powers and duties have we made mention of this.

I think it should be mentioned in the powers and duties of the Secretary when we are spelling out what he should be concerned with.

Mr. Holifield. Your thought in presenting this is to change it from a standpoint of better structure of the bill.



Mr. Erlenborn. That is right. This is strictly for that purpose. It does not take away from the Secretary.

Mr. Holifield. This gives the Secretary the whip hand on the Defense Department. Where is that reference?

Mr. Henderson. The last two words in the paragraph.

Mr. Holifield. But that is a finding -- "with full and appropriate consideration of the needs of the public interest, the carrier industry, labor, and the national defense."

If I am not mistaken this gives him a power over the Defense Department which he does not have in the bill as written.

Mr. Erlenborn. It is not our intention to do that, and I do not think it would. It merely says in developing this he should give consideration to it. It does not give him any power over the Department of Defense.

Mr. Holifield. It says "coordinate and effectively administer the transportation programs of the federal government." That gets us into deep water.

Mr. Lanigan. He could tell the GSA, for example, how to run their motor pool.

Mr. Erlenborn. My point is we already have the language in here.

Mr. Holifield. There is a difference in putting it in the purpose and give him the authority to effectively administer.



Mr. Erlenborn. We are saying it is necessary to create a Department of Transportation, but we do not give him power to accomplish this.

Mr. Fulmer. Section 7 gives the power to the President, so it is not inconsistent.

Mr. Erlenborn. If it is going to cause any trouble I am not going to press the amendment. I will withdraw it.

Mr. Holifield. I really think it goes too far. Think about it, and if you feel strongly on it offer it in the full committee.

Mr. Erlenborn. I never did feel strongly on it. It occurred to me time after time we referred back to section 2 in talking about the powers and duties of the Secretary.

Mr. Holifield. Your declaration of purpose in a bill and then the authority and methods of accomplishing that purpose are two different things. So where you are declaring a purpose here, for instance, to encourage "cooperation of federal, state and local governments" we cannot give him any more power to do that than just to consult.

We do give him power in another place to consult, and tying in the purposes, but limiting the authority of the Secretary to certain procedures. I think this would give your Secretary of Transportation a lot more authority than even you want to give him.

Mr. Erlenborn. I think your fears are unfounded.



For instance, in talking about the Defense Department and transferring this language to section 4 would give him some authority over the Defense Department, we already have in section 4(a) "shall among his responsibilities exercise leadership under the direction of the President of the transportation matters, including those affecting the national defense and those involving national and regional emergencies."

Mr. Holifield. But that is recommending.

Mr. Erlenborn. Exercise leadership.

Mr. Holifield. Exercise leadership under the direction of the President in transportation matters, including those affecting the national defense and those involving national or regional emergencies and so forth. But you leave up to the President how he shall exercise that leadership. You do not by statute give him the power to coordinate and effectively administer the transportation program of the federal government, which includes transportation and defense.

I think we are getting into deep water.

Mr. Erlenborn. I withdraw my amendment.

Mr. Holifield. The amendment is withdrawn.

The next amendment.

Mr. Erlenborn. Amendment No. 2.

Mr. Holifield. Let's look at this. I have not seen it before.

Mr. Lanigan. What this does is make an Assistant



Secretary in charge of each division and eliminates the administrators.

Mr. Erlenborn. Right.

Mr. Lanigan. This eliminates the four administrators and still leaves four assistant secretaries, one of each in charge of the particular mode of transportation.

Mr. Erlenborn. Right.

Mr. Holifield. Do you know of any assistant secretaryship that has been given statutory powers other than powers by delegation.

Mr. Copenhaver. When we created the Civil Rights Division it particularly named an Assistant Secretary for Civil Rights and gave him functions and duties. When the division was transferred over to Justice they made him an Assistant Secretary and gave him specific powers and duties.

Mr. Roback. Because the issue there was prestige and not performance really.

Mr. Erlenborn. The question that bothers me about the proposal for the administrators is that you have a level between the administrators and the secretary and assistant secretaries without their duties really being spelled out at all.

If you are going to have four operating divisions within the Department, just what will these assistant secretaries do?

Mr. Roback. It is very unusual in a reorganization bill for an assistant secretary to be identified.

For example, when we allowed the Department of Defense



to have seven assistant secretaries, or maybe eight including General Counsel, we never spelled out as to what they do. Each assistant has certain duties that cut across all the agencies. Whereas, if you limit the assistant to the top man in one agency, he is really no longer an assistant secretary but an administrator of an operating agency.

Mr. Copenhaver. In the Department of Commerce we did create an Under Secretary for Transportation.

Mr. Roback. You could probably find many analogies, mostly on the other side. You could find a few. The net effect of this recommendation I would think is a weakening effect.

Mr. Lanigan. In Commerce you do have an Under Secretary for Transportation but your assistant secretaries are not identified. The idea of having these assistant secretaries across the board was that the problems involved in coordinating transportation and the problems involving the relationships of different modes in research and in safety and other items are so great that they felt this need.

Mr. Holifield. In other words, we have got a coordination staff here. They have a big job to do the first two years in studying and developing a national transportation policy. As I see it, this is a thing separate and apart from the day-to-day responsibility of operating railroads and operating Maritime and so forth. In other words, I think you have to



a separate staff to do the very job we are telling him to do, to develop this coordinated policy, in other words, not to be bothered with a day-to-day administration of the railroads and so forth. The administrator will do that, and these people would be free and not burdened with the routine administration of the four modes, and be free to serve with the Secretary on this important job of developing recommendations and so forth to bring to the Congress.

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They would have no time for that type of work.

Mr. Erlernborn. Isn't your Assistant Secretary for Research doing this?

Mr. Holifield. No, sir, there is one for Administration already announced. The general concept described the role of Assistant Secretary. It takes the Assistant Secretary of the department out of line and makes him available for assignments that cut across department programs and require officials of the assistant secretary status. Their approach will equip the Secretary to cope with policy and program matters that need analysis or action broader than the particular modes of transportation. We have the administrator working on that. We also avoid undesirable layers of line supervision between the Secretary and the heads of operating administrations and make the assistant secretaries real aides to the Secretary instead of spokesmen for particular transportation modes.

I would look upon them as a board of directors, I might say. Organizing and analyzing and formulating policy to recommend to the Congress. This assistant secretary could be used for leadership or help to the Secretary in such matters as following: Long-range policy planning and development, transportation technology and research, public and congressional relations, interagency-intergovernmental relations, international transportation, transportation safety.

In particular the assistant secretary may serve as head of some departmental staff office or as supervisor or coordinator of the group of offices, as need be. In any event, it is envisioned that the assignments of the assistant secretary will

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vary from time to time to reflect the priority of problems confronting the Secretary. With the capabilities of the individuals holding those offices, John, I think you weaken the whole structure if you do that.

I would hope you would withdraw that amendment, also.

Mr. Lanigan. We had discussed that.

Mr. Holifield. I think the industry was pretty pleased. I talked to some of the maritime people. While they had to take this public position that Mr. Garmatz outlined, they admitted to me over the phone no later than this morning that they were getting in a better position than ever before with Congress. I guess they got a little pressure from their unions. I do not think they are going to be unhappy at all. I think you would foul up the developmental capabilities and the study capabilities of the Secretary more than anything else if you did this.

Mr. Lanigan. You may add there this language: That we have these four administrators and who shall report directly to the Secretary and shall have such duties to be sure that they report directly to the Secretary.

Mr. Erlenborn. That was one of the things left out in creating this.

Mr. Lanigan. That is I think agreeable with everyone.

Mr. Holifield. We provide that the Secretary will assign them their duties.

Mr. Lanigan. That is right.

Mr. Erlenborn. I think I pointed this out in one of our prior meetings. It was explained by Mr. Holifield and shown to



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us on the chart that these administrators would not have to go through the assistant secretaries to get to the Secretary. Yet that is not spelled out here. This was practically one of the reasons for this amendment, to put these four men who are in charge of these modes, directly beneath the Secretary, to give them status of assistant secretaries and yet leaving two assistant secretaries and the under secretary for coordination job. We are not taking away the power of the Secretary to develop intermodal policies and long-range programs. He still would have that under secretary and two assistant secretaries for this job.

Mr. Holifield. My judgment on it, as I have already stated, I would not want to weaken that.

This demonstrates one of the problems and you are completely within your right of not bringing up these amendments so that we can get the comment from the Administration on it. These are the boys that are putting this thing together. It is not that I want to give them the whole power but we should have their attitude because we are going to give them a structure in which to operate, the advantage for a certain time in studies over the years and they feel this is the kind of thing they need to do the job.

We did have their comment on this. What I would say is that if you want to consult further with them or we could call them up on this.

Mr. Erlenborn. I think I did ask Mr. Boyd about this yesterday when he was here. Mr. Sagment, too. They expressed themselves on that.



Mr. Holifield. "Who shall report directly to the Secretary and have such duties and powers as he may prescribe." That is all right. This does not answer John's point I do not think.

Mr. Lanigan. It does in part.

Mr. Erlenborn. In part.

Mr. Lanigan. It preserves a direct line you wanted to be sure to have.

Mr. Holifield. I am willing to accept something along this line as a substitute, John, if you want to withdraw and offer this. Then we can have some consultation with them now and the time the full committee meets. If they will go along with it I will be willing to go along with it.

Mr. Erlenborn. I am going to make a judgment at this time. There are eight amendments we have to offer. There are seven more to go.

My judgment is this: This is not one of those things that I consider to be extremely important. I think that the substitute language that we had discussed earlier in one of our meetings, and I think fairly well agreed upon which you have just read from your notes there, would satisfy me on this point. I will withdraw Amendment No. 2 and have substituted for it the language about reporting directly to the Secretary and having such duties and powers prescribed by him.

Mr. Holifield. Without objection, the Erlenborn amendment will be accepted as outlined here, not the original.

Mr. Erlenborn. All right. The exact wording prepared by



the staff?

Mr. Holifield. Yes.

The amendment which we have just voted on.

Mr. Henderson. Erlenborn Amendment No. 2.

Mr. Holifield. That is Erlenborn Amendment No. 2. After the word "shall" on the second line of page 4, insert the following words: "report directly to the Secretary", and on line 3 after the word "as" insert the word "he" and after the word "may" strike out the word "be" and strike out the last three words, "by the Secretary" and the letter "d" on the word "prescribed" and substitute a period.

Mr. Henderson. It would be well to read it, Mr. Chairman.

Mr. Holifield. The language will then read as follows, beginning with the second line: "and with the consent of the Senate and who shall report directly to the Secretary and have such duties and powers as he may prescribe."

Next amendment?

Mr. Erlenborn. Let me raise a question here.

Mr. Holifield. Without objection, that will be adopted.

Mr. Erlenborn. It was called to my attention there is no salary level assigned to the administrators.

Mr. Henderson. They announced what they had in mind.

Mr. Holifield. Did they not announce the IV for the FAA?

Mr. Henderson. III for FAA. That is provided for in the bill. They provide extra IV's and V's in Section 10. That is on page --

Mr. Lanigan. They provide the positions but they do not itemize them.



Mr. Henderson. They provide enough to do this.

Mr. Holifield. In the place of freezing that into the statute which would make it so that you could not change it, would it be satisfactory to you for us to write into the report, a section of the report, that it is the understanding of the committee that the administrator of the aviation agency shall be compensated at a level of III and the administrators, the other three modes, will receive a salary level of IV?

Mr. Erlenborn. I would defer to the judgment of those better schooled in this in drafting this.

Mr. Holifield. They may want to change this later on. If we put that in the statute they would not change their salaries. They would have to get an amendment to the law, I think.

Mr. Fulmer. The argument was with the Federal Railway Administration since that will be a rather small one to start with. They have not made up their minds as to whether he should be one of these IV's provided they are one of the V's.

Mr. Holifield. If a paragraph of the report will take care of that, I would rather not freeze that in the statute.

All right, fix that section of the report.

Mr. Erlenborn. This is Amendment No. 3 though it is marked 4.

Mr. Holifield. Re-mark that No. 3.

On page 9. This is Section 4(e). "Nothing in this Act shall be construed to authorize, without appropriate action by Congress, the adoption or revision of any transportation policy."

Mr. Erlenborn. As far as the amendment goes for that



point, it does what we discussed yesterday. Taking out the word "implementation" and restricting the Secretary so that he can not adopt or revise any transportation policy without appropriate action by Congress. That was acceptable to the Administration witnesses as far as that goes.

Mr. Lanigan. We have a new 4(3), if I can read it, that is exactly the same. It carries out Mr. Holifield's idea of having both items in one section.

Mr. Holifield. "Nor shall the Secretary promulgate investment standards and criteria pursuant to Section 7 of this Act which are contrary to or inconsistent with acts of Congress applicable to such standards or criteria."

We have to get that in.

Mr. Erlenborn. We do only in the second part of this amendment. We take it out a little differently and we do this in Section 7. This kind of gets to the heart of the problem of Section 7 and the fear that has been expressed by some of our colleagues and other committees of jurisdiction.

Mr. Roback. The trouble with the section as now written, if by existing law the Secretary has got some power to make policy, for example, about something, this in effect takes it away from him.

Mr. Erlenborn. I do not know of any act of Congress that turns over to a secretary of a department the right to establish policy.

Mr. Roback. The trouble comes with what policy means. For example, where the congressional wording is usually in very



broad terms, and there may be certain delegated powers under FAA, the FAA administrator is supposed to promote air commerce. It is hard to say if that is a policy and in effect he can not do it without appropriate action of the Congress.

I do not think that is what is intended.

Mr. Erlenborn. The proposed revision of 4(e) that you have given us does the same thing.

Mr. Roback. Except in here that same limitation applies to that with this exception; that is, national transportation policy. I do not know if that changes anything or not.

Mr. Erlenborn. I do not see that it does. If that word was the nub of it we could add "national". I do not think that that has any real bearing on this.

Mr. Erlenborn. The words "thereunder" --

Mr. Holifield. The last two sentences of the subsection.

Mr. Erlenborn. That is the one in standard type and the last sentence in the italics. The standards and criteria developed or revised. That is the way it starts. That is on page 32.

Mr. Lanigan. This changes the basic concept of the section because as the section is written the President will approve and on the transportation investment criteria and standards this would require that it go back to Congress to have that done.

Mr. Erlenborn. That is right.

Mr. Lanigan. This means that they, the President and the Secretary, could not without coming back to Congress adopt standards or criteria.



Mr. Erlenborn. Exactly our purpose.

Mr. Lanigan. It is inconsistent with the Water Resources Council which does not have to.

Mr. Erlenborn. We are fussing about an altogether different thing. When you are talking about adoption of standards of water quality, Congress has no power to do this.

Mr. Lanigan. That is not a matter of water quality. It is a matter of investment in water development projects.

Mr. Erlenborn. I think this would really take care of any opposition that there has been. For instance, the Public Works Committee. This is the fear that they have, that their historic rights are going to be taken away from them.

Mr. Holifield. I think we have preserved those rights in a dozen places. This was done by other language. As I understand it, if they would publish in the Federal Register standards and criteria, and there was no objection to it say for 30 days, within 30 days they were acceptable to everyone, they could automatically put them into effect.

Mr. Lanigan. They would go to the President.

Mr. Holifield. Under this, whether they were, whether industry wanted it or anybody else wanted it, this would tie it coming back to Congress?

Mr. Lanigan. I think that is right. I think there is no doubt that was intended. They would have to come back to Congress before they could adopt any change.

Mr. Holifield. In the place of giving notice to the Congress, with the committee's having the right to call them up for testimony on it, and which they might very well do.



Mr. Lanigan. This would also mean the possibility of considerable delays while the committee considers these recommendations. This was felt to be congressional action or presidential action. That is what it does.

Mr. Holifield. This goes into the powers of the President, does it not?

Mr. Lanigan. I think it does to a considerable extent because in fact the present so-called Green Book that sets forth the standards for evaluating the project and so on, although it has been published by Congress, is really an executive document. This would I believe remove powers that the President has not exercised.

Mr. Holifield. Shall we wait for Dan to get back?

Let us hold up on this just a minute. What is the next one? That is the same page?

Mr. Erlernborn. Thirty-two.

In other words, striking all of 7(b) and substituting this for it.

Mr. Holifield. "Shall (1) be prepared in accord with such standards and criteria" and then strike out after that "upon the basis of information furnished by the Secretary with respect to projected growth of transportation needs of traffic in the effected areas, the relative efficiency of various points, various transportation services in the area, and general effect of the proposed investment on the overall transportation system, on the regional and national economy; (2) coordinated by the proposing agency and appropriate with other federal agencies and local units of the government at the conclusion of and



transmitted thereafter by the proposing agency for disposition in accordance with the laws and procedures established."

John, what is your thought about taking all of those limitations on the Secretary? You might say directions to the Secretary. Is it you do not want him to consider all of these things?

Mr. Erlenborn. For one thing we are tying in here by statute the fact that the Secretary can develop the facts upon which these plans and surveys must be based. We are giving the Secretary unusual power here really. Every other agency that is involved in proposing any program, plan, has to establish this not on the basis of their own research, their own facts that they have developed, but the facts given to them by the Secretary. As far as these items that should be taken into consideration, transportation needs, available transportation services in the area and so forth, these can all be part of the standards and criteria. I do not think it is desirable that we freeze these into the law.

The Secretary may decide that some of these elements are not important but he can from time to time establish standards or criteria and put in whatever elements he thinks are important.

Mr. Holifield. Every survey, plan, or report which includes the proposal he has to submit that to, publish that in the Federal Register anyway and give the committees a chance to look at it?

Mr. Erlenborn. Standards and criteria. Not the surveys or plans.



Mr. Lanigan. There are two things this paragraph would do.

Mr. Holifield. Which includes the proposal, it says. You certainly would not want preliminary plans or studies to be submitted to the Congress but only when they got to the point where they would include a proposal.

Mr. Erlenborn. These are not submitted to Congress anyway.

Mr. Lanigan. There are two phases to this. The first part relates to the adoption of standards and criteria. The second paragraph, (b) relates to the approval of individual projects. At the present time, each individual project under the bill will be coordinated through the Secretary of Transportation. The Secretary of Transportation has a coordinating function. This amendment on the bottom of this page eliminates any coordinating function by the Secretary of Transportation on individual projects.

Mr. Holifield. That includes local units of government, precluding the Secretary and their views.

Mr. Lanigan. Eliminates coordination with other federal agencies and Transportation Department and the local units of government.

Mr. Holifield. I could not accept that.

Mr. Lanigan. The law says the council shall establish after consultation with other interested entities, both federal and non-federal as the council finds appropriate, and with the approval of the President, principal standards and procedures for federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and



evaluation of federal water-related land resources projects. Then it goes on. I do not think they have to come back to Congress for that.

Mr. Roback. It comes to Congress for authorization of a project.

Mr. Holifield. That would be required.

Mr. Lanigan. We are still in Section 7. This gets into --

Mr. Holifield. Do you want to vote on this?

Mr. Erlenborn. Yes.

Mr. Holifield. The vote occurs on Amendment No. 3 by Mr. Erlenborn. Those in favor signify by saying aye; opposed, no.

Please call the roll.

Miss Fel'Dotto. Mr. Dawson.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Reuss.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Rosenthal.

Mr. Rosenthal. No.

Miss Fel'Dotto. Mr. Garmatz.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Gallagher.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Brown.

Mr. Erlenborn. Aye.

Miss Fel'Dotto. Mr. Erlenborn.

Mr. Erlenborn. Aye.

Miss Fel'Dotto. Mr. Wydler.

Mr. Erlenborn. Aye.



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Miss Fel'Dotto. Three aye and six nay.

Mr. Rosenthal. Mr. Chairman, I have to leave now and I authorize you to cast my proxy.

Mr. Holifield. All right.

What is the result of the vote?

Miss Fel'Dotto. Three yes and six no.

Mr. Holifield. The amendment is lost.

All for Amendment 4(3).

Mr. Lanigan. I will read that. There is a proposed amendment to substitute for the existing 4(3) on page 9 I believe of the bill.

The amendment would change the section to read as follows:

"Nothing in this Act shall be construed to authorize, without appropriate action by Congress, the adoption or revision of a national transportation policy. Nor shall the Secretary promulgate investment standards or criteria pursuant to section 7 of this Act which are contrary to or inconsistent with Acts of Congress relating to standards or criteria for transportation investments."

Mr. Holifield. Contrary to or inconsistent with Acts of Congress relating to standards or criteria or transportation investment."

Mr. Lanigan. That was suggested by the legislative counsel.

Mr. Holifield. The vote now occurs on the Holifield amendment. That is on page 9, 4(3). All those in favor signify by saying aye; opposed or contrary, no.

It is carried.

The next amendment?



Mr. Erlenborn. Amendment No. 4. This is rather lengthy and with your permission I will summarize the effect of this amendment.

(Amendment No. 4 follows:)

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Mr. Erlenborn. This would eliminate the Office of Accident Investigation. It would provide that the accident investigating powers and procedures transferred from FAA and from the ICC relating to motor vehicles will be vested in the National Transportation Safety Board. It would provide further that the day-to-day investigation of minor accidents would remain as it is now contemplated in the bill with the operating agencies plus the Maritime and Rail. So that the National Transportation Safety Board would function in a review capacity in those areas but would have investigating power under the aircraft, FAA investigating power, and auto, motor vehicle accident investigation in whatever there is now and the substantive body of law will be enacted in this Congress on highway traffic safety.

That is the substance of the amendment.

We have that now with two offices. We have the operating agency doing the accident investigation and the Office of Accident Investigation plus a certain amount of limited power in the board. What this would do would be to place in the board, the accident investigating authority in the two principal areas of aviation or highways.

Mr. Holifield. They would be directly responsible for directing investigations and making determinations?

Mr. Erlenborn. Right.

Mr. Holifield. That is Amendment No. 4.

Mr. Erlenborn. Right.

Mr. Holifield. The question now occurs on the Erlenborn Amendment No. 4.



Those in favor say aye.

Mr. Erlenborn. Call the roll on it.

Mr. Holifield. Call the roll.

Miss Fel'Dotto. Mr. Dawson.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Holifield.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Reuss.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Rosenthal.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Garmatz.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Gallagher.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Brown.

Mr. Erlenborn. Aye.

Miss Fel'Dotto. Mr. Erlenborn.

Mr. Erlenborn. Aye.

Miss Fel'Dotto. Mr. Wydler.

Mr. Wydler. Aye.

Miss Fel'Dotto. Three aye, six nay.

Mr. Holifield. The amendment is not agreed to.

Do you want to consider the committee amendments in the draft?

Mr. Erlenborn. I have two more short amendments. Why don't you dispose of them?

Mr. Holifield. All right.



Mr. Erlenborn. We can dispose of these and maybe go to the committee amendments. This would be Amendment No. 5. It is just in handwritten form.

This is Amendment No. 5 you have before you. This is on page 18.

Mr. Holifield. That takes out the exception and places that under the Secretary at this time?

Mr. Erlenborn. That is right.

Would you like to read that?

Mr. Lanigan. On page 18, amend section (a)(2) by deleting subsection (b) and inserting the following:

"(b) The Urban Mass Transportation Act of 1964 (78 Stat. 302, 49 U.S.C. 1601 et. seq.)".

Mr. Holifield. What is the purpose of this?

Mr. Erlenborn. This is to transfer to the department the responsibility under the Urban Mass Transportation Act. This is what under the bill would be studied for a year and then recommendations made. As you probably have noticed through the hearings, I have maintained a constant attitude that if we are going to have a transportation department we ought to have all transportation programs in it. I saw no reason for this exception.

Mr. Holifield. The question now occurs on the Erlenborn Amendment No. 5. Those in favor signify by saying aye; contrary, no.

Mr. Erlenborn. Are you going to call the roll?

Miss Fel'Dotto. Mr. Dawson.

Mr. Holifield. No.



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Miss Fel'Dotto. Mr. Holifield.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Reuss.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Rosenthal.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Garmatz.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Gallagher.

Mr. Holifield. No.

Miss Fel'Dotto. Mr. Brown.

Mr. Erlenborn. Aye.

Miss Fel'Dotto. Mr. Erlenborn.

Mr. Erlenborn. Aye.

Miss Fel'Dotto. Mr. Wydler.

Mr. Erlenborn. Aye.

Miss Fel'Dotto. Three aye, six no.

Mr. Holifield. That is not agreed to.

Next amendment.

Mr. Erlenborn. This next amendment, No. 6, maybe you want to read it for the record and I will explain its purpose.

Mr. Lanigan. Andment No. 6. On page 44 amend subsection 2 to read as follows: "2. All moneys received by the department in payment of the costs of work under paragraph 1 shall be paid into the Treasury as miscellaneous receipts."

Mr. Erlenborn. Let me explain the purpose of this amendment. I am advised by Mr. Copenhaver that Title V of the U.S. Code already has similar wording. There is this problem that we



saw with the Intergovernmental Cooperation Act and in other places where when services are rendered by a federal agency on a reimbursable basis, it can happen and has happened, that they develop sort of a revolving fund. They use the receipts from this source to augment their budget and augment the funds available to them without congressional appropriation. This would guarantee that whatever receipts there were in the Department of Transportation for services that they rendered to other elements of government would go into the Treasury subject to being reappropriated and reauthorized so that they would not be available without appropriate authorization and appropriation.

4:15

AP



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Mr. Lamigan. Could I make a comment on that?

In the case of the Economy Act which authorizes one federal agency to perform services for another federal agency, the reimbursable funding to reimburse the appropriation which was used to cover the cost of that service. There are other instances where you have authority to reproduce documents in Title V where there is also provision for reimbursing the appropriation. The trouble is that if these special services are performed and paid for out of the Department's appropriation, unless there is a special appropriation made for carrying these on they will deplete their own funds and not be able to carry on their normal activities.

Mr. Holifield. Give us an example of that.

In other words, if the Department made a study for a project that would be related, let us say, to a city, and because of the Department's facilities they could make the study, and the city would ask them to make it, then such moneys that they expended in making the study, when they were reimbursed, it would not go to the Department, but to the Treasury.

Mr. Lanigan. That is right.

Mr. Roback. Under property disposal certain funds go back for further disposal.

Mr. Holifield. How about the right to trade in properties, trade in typewriters and automobiles and things like that, would this affect that?

Mr. Roback. It does not affect it. Those are



provisions which allow the income, so to speak, to be used at the discretion of the agency.

Mr. Erlenborn. This amendment would not affect that. This is reimbursable services, not trading in property.

Mr. Lanigan. This does not relate to trading in at all. Paragraph 1 authorizes the Secretary to perform work for states, territories or subdivisions or persons to make special statistical studies relating to commerce and paragraph 2 provides that when he does that he can take the money and reimburse his appropriation or reimburse the fund that he has set up for it, and this requires that --

Mr. Erlenborn. It would mean that he would have to justify to the proper committee in Congress the expenditures in this field.

Mr. Holifield. He is offering a service which he is authorized to offer to a city. He spends money making the study. All he gets from the city is the money to replace it.

Mr. Roback. That has to go into miscellaneous receipts and he would not make any studies.

Mr. Erlenborn. He certainly would if he came to a committee of Congress under proper budgeting procedures and established in his budget an item for this.

Mr. Roback. He would not know in any given year unless all studies were projected for 18 months what he would be doing.

Mr. Erlenborn. We can have an awful lot of people on the federal payroll and an awful lot of activity going on that the Congress will never have any control over. This is



sort of going into business as a consultant separate and apart from any budget procedure.

Mr. Henderson. Of course, you know, Congressman, that several agencies have this authority now.

The Inter-Governmental Cooperation Act which is before us would give all agencies that authority.

Mr. Erlenborn. We raised the same point there.

Mr. Henderson. That is right. It may be, Mr. Chairman, that you would want to go part of the way and have a provision included here requiring the Secretary to make a special report to Congress on the moneys that he received. The information would come to the Appropriations Committee if you were concerned about the possible amount involved here. You could require them to make a report each year or maybe just for the first year or the second year.

Mr. Holifield. Let us assume that in his budget he asks or \$100,000 for the purpose of funding these studies. He would have to estimate that he might need \$100,000. Then if he expended that for this purpose and it was refunded to him, he could continue to use that \$100,000 for that purpose.

Mr. Erlenborn. That is right.

Mr. Henderson. That is correct. For the ordinary expenses incidental to the work and/or to secure connection there with the special services of persons who may not be officers of the United States.

Mr. Holifield. These moneys may be used at the discretion of the Secretary, notwithstanding any other provision of the law for the ordinary expenses incidental to the work and/or



to secure in connection therewith the special services of persons who are neither officers or employees of the United States. In other words, if it was a highway, would that figure in?

Mr. Lanigan. This would permit him to hire contract consultants, if necessary.

Mr. Erlenborn. In a way it allows the Secretary to go into the consulting business. It might be that states or local subdivisions of the states might find it much cheaper to come to the Secretary to have their engineering work done. He would in effect have a revolving fund which he could continue to use as it is reimbursed without ever coming to Congress for authorization.

Mr. Holifield. To compare special statistical compilations and prepare transcripts.

It says that the Commerce Department currently has similar authority. Under this authority for example, the Maritime Administration of the Department of Commerce currently makes studies relating to foreign and domestic transportation. It is an essential function to provide these studies for the use of the agency and the maritime industry. Such information is of particular importance to the agencies and operators participating in statutory hearings so that a proper record can be developed for additional U. S. Flag service. The source of the provision, Section 4(g) is modeled after 15 USC which authorizes the Secretary of Commerce to request information."

The Department of Interior authorizes the Secretary of Interior to provide charge for copies of records,



documents and the like when not against the federal interest. The Federal Aviation Agency is empowered to disseminate information relative to civil aeronautics other than that disseminated by the Board under Sub-Chapter 4. The Federal Power Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and is authorized to sell at reasonable prices copies of all maps, atlases as it may from time to time publish. Such reasonable prices may include the cost of compilation, composition and reproduction. The Commission is also authorized to make such charges as it deems reasonable for special statistical services and other special or periodical services.

It doesn't say directly as to what is done with the money after getting it.

Mr. Roback. If it is not specified it goes into miscellaneous receipts.

Mr. Erlernborn. Mr. Copenhaver says that by law the money goes to miscellaneous receipts unless otherwise specifically provided.

We are specifically providing that it does not go to miscellaneous receipts.

Mr. Holifield. I am going to instruct the staff to get some information from the Administration on exactly what is contemplated here in more detail than we have at the present time. For the present, I am going to have to reject the amendment. Would you want a vote on it?

Mr. Erlernborn. Yes, I think we might as well.



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Mr. Holifield. Call the roll.

The Clerk. Mr. Dawson.

Mr. Holifield. No, by proxy.

The Clerk. Mr. Reuss.

Mr. Holifield. No, by proxy.

The Clerk. Mr. Rosenthal.

Mr. Holifield. No, by proxy.

The Clerk. Mr. Garmatz.

Mr. Holifield. No, by proxy.

The Clerk. Mr. Gallagher.

Mr. Holifield. No, by proxy.

The Clerk. Mr. Erlernborn.

Mr. Holifield. Aye.

The Clerk. Mr. Wydler.

Mr. Erlernborn. Aye, by proxy.

The Clerk. Mr. Brown.

Mr. Erlernborn. Aye, by proxy.

The Clerk. Three ayes, six noes.

Mr. Erlernborn. This item was of great concern to Consulting Engineers. They are very disturbed about the possible competition they would have with federal agencies performing consulting engineering services.

Mr. Lanigan. In this case as I read the section, the authorization is to make statistical studies.

Mr. Erlernborn. It is broader than that, it is other matters within the scope of the Department.

Mr. Holifield. What page is that on?

Mr. Lanigan. 44.



Mr. Holifield. When you contact the Administration on this --

Mr. Erlenborn. 43 is where the wording is. It says the Secretary is authorized under written request of any person, state, territory possession or political subdivision thereof to make special statistical studies relating to foreign and domestic transportation and other matters falling within the province of the Department.

Mr. Holifield. That is to make statistical studies. It still confines it to statistical studies, does it not?

Mr. Lanigan. I think we can make that clearer in the history that this refers only to the making of special statistical studies or to preparing from its records special statistical compilations and to furnish transcripts and so on.

Mr. Holifield. If this is not as broad as Mr. Erlenborn thinks it is, we ought to clarify that. Will you check on the word statistical before matters? So we will know what we are doing either one way or another. If it is as broad as Mr. Erlenborn thinks it is, let us find out if it is and ask them to justify them. Are there any further amendments?

Mr. Erlenborn. No.

Mr. Holifield. Do you want to go through this one by one or do you want to vote on them en bloc, what we already have?

Mr. Erlenborn. I think we can go through them one by one, but I do not think we need a separate vote.

(Discussion off the record)

Mr. Lanigan. The first amendments are in Subsection 3(a). There are a few technical word changes. In Section



3(b) the General Counsel has been added to the list of people who may be designated to serve as Acting Secretary in case of the absence of the Secretary. This is common in all agencies. In 3(e) we have already voted; (f) sets up the Office of Accident Investigation. In 4(a) we have added at the end of the Subsection, "and consult with the heads of other federal departments and agencies on the transportation requirements of the Government."

Mr. Holifield. We have also agreed to an amendment there.

Mr. Lanigan. We had agreed previously.

Mr. Holifield. To an amendment I offered in substitute of the Rosenthal amendment.

Mr. Erlenborn. We agreed the other day in adding some words here that is not included in the amendment. In line 7 after the word "recommendations" to add the words "to the President and Congress."

Mr. Holifield. That is right.

Without objection, that will be agreed to.

Mr. Lanigan. We have also added the language relating to noise abatement.

Section 4(b) has a technical amendment.

Section 4(c), 4(d), old 4(e) and old 4(f) and 4(g), (h) and (i) have been moved to later parts of the Act without any change in substance.

In 4(c) we have added a new sentence to read as follows, in addition to certain technical amendments:

"Any statutory requirements relating to notice, hearings, action upon the record, or administrative review



that apply to any function transferred by this Act shall apply to the exercise of such functions by the Secretary or the National Transportation Safety Board."

The purpose of this is to preserve the applicability of the Administrative Procedure Act and other provisions relating to notice, hearings, action upon the record or administrative review.

Mr. Holifield. A comma after "record."

Mr. Henderson. Yes, comma after "record."

Mr. Lanigan. Comma, or administrative review.

Mr. Holifield. Without objection.

MR. Lanigan. The new Section 4(d) has a few technical changes. Old Section 4(1) is moved to a later part of the Act. Section 4(e) has been amended as already acted upon by the subcommittee. Section 5 has a number of amendments designed to strengthen the Transportation Board, which appear in italics in the language. I won't go through them because they have been discussed at length. We also add a requirement that the Board report to Congress after two years on the effectiveness of its work and of the new Department's work with respect to accident investigation and make an interim report after one year. The levels of the Board have been changed in Section 5(i) to a level 5 for the Chairman of the Board and -- pardon me, level 4 for the Chairman of the Board -- and level 5 for the other members of the Board. Elsewhere in the same section we authorize the Board to appoint its own hearing examiners and to utilize the services of other federal agencies and other facilities



of the new department, and to cooperate with state, local, municipal and other local agencies and utilize their assistance

Section 6(a) has been recast to set forth in a clearer manner the acts, functions of which have been delegated.

One new subsection has been added, subsection (c) which preserves the authority of the President to transfer the Federal Aviation Act functions to the Department of Defense in time of war. On page 31 of the draft, there is a new subsection (h) added to Section 6 to preserve the authority which exists directly in hearing examiners under the Administrative Procedure Act.

On page 31, among the exemptions to the authority of the Secretary to issue transportation criteria and standards-- investment criteria and standards -- there has been added a grant in aid program authorized by law. That is the new exception No. 2. The other subsequent exceptions have been renumbered. Then on page 32, the following language has been added.

"The standards and criteria developed by the Secretary shall be applicable to transportation features of water resource projects upon concurrence of the Water Resources Council and shall be compatible with the standards and criteria for economic evaluation applicable to non-transportation features of such projects. For the purposes of considering such standards and criteria in relation to water resources projects, the Secretary shall be a member of the Water Resources Council."

At the end of this subsection the sentence has been added



to read "The Secretary shall at a time selected by him prior to the presentation of standards and criteria to the President for approval publicly a notice of proposed standards and criteria in the Federal Register and provide an opportunity for interested persons to present their views on them."

Mr. Erlenborn. Could I ask a question as to the last sentence? Let me read the sentence. It would be easier to do that. "For purposes of considering such standards and criteria in relation to water resource projects the Secretary shall be a member of the Water Resources Council."

Does that mean he does not act as a member on any other item, that he will be only a member to vote on and present his views on these particular standards and criteria?

Mr. Lanigan. That is what I believe it means. That is the intent of it.

Mr. Erlenborn. He will be the only sort of part-time member. All the rest will be full members.

Mr. Lanigan. Yes.

Mr. Erlenborn. I just wanted to be clear as to the intention.

Mr. Holifield. Do you think it is worthwhile that we put that in the report?

Mr. Henderson. The specifics he just mentioned.

Mr. Holifield. Yes.

Mr. Henderson. Surely.

Mr. Holifield. In other words, we are not making him a full-fledged member of the Water Resources Council on



the things that are not related to transportation.

Mr. Lanigan. We are not.

Mr. Holifield. Clarify it in the report. Would it be better to take the regular print in between that and put it after the second batch of italics? In other words, have the standards and criteria developed or revised pursuant to this subsection shall be promulgated by the Secretary upon the approval by the President, put that after the next section.

Mr. Lanigan. After the next sentence.

Mr. Holifield. Yes. In other words, move this italics up to the other italics and move that down to the last of the paragraph.

Mr. Lanigan. They would then be in the proper order.

Mr. Holifield. In the order of function or action.

Mr. Lanigan. In 7(b) there has been a change. The provision had read that among the items to be considered was a relative efficiency of various modes of transport, the available transportation services in the area and the general effect of the proposed investment on existing modes. That has been changed to the general effect of the proposed investment on the overall transportation system of the area.

Mr. Holifield. What did we gain by that?

MR. Lanigan. I would have to say, or almost sidestep that by saying that this was requested by the Senate and it was the language that was prepared to meet a Senate request.



I think they believe that this gave a broader view than just the existing modes.

Mr. Roback. I think there was a little bit into the economic regulatory function of the mode and they want to de-emphasize that. That is, the competitive situation from one mode to the other. That is why they generalized it. Somebody raised the question, isn't this the kind of thing that the regulatory commissions have to worry about, this relationship to the existing mode? They did not want to tie it that closely.

Mr. Holifield. I do not think where they accomplished much.

Mr. Roback. One of the witnesses raised a question about it, I believe.

Mr. Holifield. We better check that pretty thoroughly because somebody might ask the question. It is not very clear to me what they have done.

Mr. Lanigan. Then in the last clause of 7(b), that is Clause 3, formerly provided that after the plans had been reviewed they would be transmitted by the proposing agency to the President for disposition in accordance with law and procedures established by him. That has been changed to provide that the agency shall transmit the proposals for disposition in accord with law and procedures established by the President, thereby avoiding the need of sending each one of these individual proposals to the President, and also preserving the direct transmission from the agency to Congress where it is provided for by law.



In Section 8 there have been a number of word changes but nothing of substance.

In Section 9 the same is true. In fact, the changes from here on, from Section 9 on, were all changes that were worked out by the two staffs and the Administration in improving the language in the bill and no substantive changes were made. Do you want to go on with each section?

Mr. Erlenborn. I do not think we need to go through the balance.

Mr. Copenhaver. I have just one possible point to raise. On page 46 I think we failed to correct something we did earlier there. You see at page 46 we still have the Chairman of the Safety Board in Subsection (e) which is level 5. We want to correct that to conform with this and put him in Section (d) which is level 4 and the members are Section 5. It is a minor point.

Mr. Lanigan. That is right, we have to do that.

Mr. Holifield. Thank you for bringing that to our attention.

Mr. Lanigan. We also have eliminated the provision of the supergrades.

Mr. Holifield. What is the actual change there?

Mr. Lanigan. This is conforming amendments.

What happens here, by changing the word "Chairman," National Trade and Transportation Safety Board to "Members," we make them level 5 in the federal executive pay statute, and we will add the Chairman of the National Transportation Safety Board to Subsection 3, which is Subsection (d) of the



Federal Executive Pay Act, to add the Chairman of the  
National Transportation Safety Board to the list of  
employees who are level 4.

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That is all the changes we have.

Mr. Nordhaus has a comment here.

Mr. Nordhaus. There are still a few technical changes that need to be made, particularly in section 6. I would like to have the authority to incorporate them in the new bill.

Mr. Holifield. Check with Bill and both counsels before you do.

If there is no objection then, the committee amendments will all be approved.

A clean bill will be introduced with a change in number.

The question before the committee is adoption of the bill as amended for the purpose of perfecting it typographically and reporting it to the main committee. All those in favor signify by saying aye.

Call the roll.

The Clerk. Mr. Dawson.

Mr. Holifield. Aye.

The Clerk. Mr. Holifield.

Mr. Holifield. Aye.

The Clerk. Mr. Reuss.

Mr. Holifield. Aye.

The Clerk. Mr. Rosenthal.

Mr. Holifield. Aye.

The Clerk. Mr. Garmatz.

Mr. Holifield. Aye.



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Transportation

The Clerk. Mr. Gallagher.

Mr. Holifield. Aye.

The Clerk. Mr. Brown.

Mr. Erlenborn. Aye.

The Clerk. Mr. Erlenborn.

Mr. Erlenborn. Aye.

The Clerk. Mr. Wydler.

Mr. Erlenborn. Aye.

The Clerk. Unanimous.

Mr. Holifield. The meeting now stands adjourned.

(Whereupon, at 5:50 p.m., the committee adjourned.)